IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 2198 of 2004

Between:

G.B.V.S.Nageswara Rao, s/o Narayana Rao,
Deputy Secretary to Government, Law Department, Secretariat, Hyderabad.

..... PETITIONER

AND

State of Andhra Pradesh, represented by its Secretary, Legal Affairs Department, Secretariat, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction in the nature of mandamus or otherwise declaring the Memo No.3310/318/M1/97 dt.22-1-98 and consequential GO.RT.No.110 dated 22.1.1998 including judgment of the Hon'ble Tribunal in OA No.3812/98 dt.20-1-2004 as arbitrary, illegal, discriminatory, unconstitutional, violating Article 14, 21 of the Constitution of India apart from ultra vires to Rule 20 and 21 of the A.P.C.S. (CCA) Rules and violating the principles of natural justice and set aside the same in the interest of justice, as otherwise the petitioners will be put to irreparable loss and injury.

Counsel for the Petitioner: MR.P.V.KRISHNAIAH

Counsel for the Respondent: GP FOR SERVICES-II

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.3812 of 1998, dated 20.1.2004.

2. The matter has a chequered career. The petitioner is the applicant before the Tribunal. He was working as Assistant Secretary at the relevant time in the Law Department. While so on 7.8.1991 a charge sheet was issued to him alleging following charge:

> "That you Sri G.B.V.S. Nageswara Rao, Section Officer, while working as Assistant Section Officer in the Law Department, A.P. Secretariat at Hyderabad, had acquired Law Degree from Marathwada University representing yourself as non-Government servant and obtained the Law Degree as if you stidied at Nanded Law College situate about 400 miles from Hyderabad and thereby contravened the provisions of Rule 3 of the A.P. Civil Services (Conduct) Rules".

Thereafter an enquiry was conducted and ultimately the Enquiry Officer held the charge was not proved and therefore the Government issued G.O.Ms.No.2, dated 6.1.1994 dropping further action. However, that order came to be challenged by some other employees in O.A.No.1319 of 1994. The learned Tribunal, after considering the matter, set aside the said G.O.Ms.No.2, dated 6.1.1994 and directed the Government to issue fresh charge sheet to the petitioner. Accordingly the Government commenced fresh enquiry by proceedings dated 30.1.1997 by appointing an Enquiry Officer. Even second time also the Enquiry Officer held that the charge was not proved. But giving a go-by to this finding, the Government issued Memo No.2310/10/M1/27 dated 22.1.1998 for framing charges against the petitioner. Assailing the said order, the petitioner filed the present OA. The learned Tribunal, however, refused to interfere with the matter and dismissed the OA. Against the said dismissal order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submits that the successive charge sheets are wholly illegal and violative of Article 21 of the Constitution of India. It is also submitted that when initial charge sheet was issued on 7.8.1991, the Enquiry Officer found that the petitioner was not guilty and the Government accordingly dropped further action. But, however, when third parties challenged G.O.Ms.No.2, dated 6.1.1994, the said GO was set aside by the Tribunal and consequently fresh enquiry was sought to be conducted and in fact fresh enquiry was conducted and in the second enquiry also the petitioner was found not guilty by the Enquiry Officer. But, without there being any further proceedings, the Government again issued a fresh charge sheet in G.O.Rt.No.110, dated 22.1.1998.

4. We have also heard the learned Government Pleader for Services-II.

5. The question that calls for consideration is whether it is open for the Government to issue fresh charge sheet when the matter had already enquired into by the Enquiry Officer and the Enquiry Officer found him not guilty of the charge.

6. We find such a procedure is contrary to law and also the Rules framed by the Government. In fact in the counter it was clearly admitted that the Enquiry Officer found the petitioner not guilty of the first part of the charge and also second part of the charge. In such a situation, without even referring to the issue, issuing fresh charge sheet in G.O.Rt.No.110, dated 22.1.1998 is illegal and incompetent. If the Government was not satisfied with the report of the Enquiry Officer, it is always open for it to differ with the same, but completely giving a go-by to the Enquiry Officer's report is wholly unwarranted and it smacks of bias attitude on the part of the Government against the petitioner herein.

7. It is also brought to the notice of this Court that the fresh enquiry was commenced against some other Officers consequent on setting aside of G.O.Ms.No.2, dated 6.1.1994 and when the Enquiry Officer found them not guilty, no further proceedings were initiated against those Officers except the petitioner herein and therefore discriminatory treatment was meted to the petitioner. We are not inclined to go into the above aspect as we held that the Government is incompetent to issue fresh charge sheet against the petitioner.

Accordingly the order of the Tribunal is set aside and consequently the order passed by the Government in G.O.Rt.No.110, dated 22.1.1998 also shall stand quashed.

8. In the result, the Writ Petition is allowed. No costs.

(G.BIKSHAPATHY, J.)

16th March, 2005.

(P.S.NARAYANA, J.)

SSR

To

1 The Secretary, Legal Affairs Department, State of Andhra Pradesh, Secretariat, Hyderabad.

2 The Registrar, A.P. Administrative Tribunal, Hyderabad.

3 2 CCs to G.P. for Services-II, High Court of A.P. Hyderabad. (OUT)

4 2 CD copies

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